

MINUTES
OF THE
ENVIRONMENTAL PROTECTION COMMISSION
MEETING
JANUARY 13, 2009

INGRAM OFFICE BUILDING
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URBANDALE, IOWA

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MEETING MINUTES

CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson Henry Marquard at 10:10 a.m. on January 13, 2009 in the Ingram Office Building, Urbandale, Iowa.

COMMISSIONERS PRESENT

Suzanne Morrow, Secretary – on teleconference
Gene Ver Steeg
David Petty
Susan Heathcote
Henry Marquard, Chair
Paul Johnson
Martin Stimson
Shearon Elderkin

COMMISSIONERS ABSENT

Charlotte Hubbell, Vice-Chair

ADOPTION OF AGENDA

Move: Director's Remarks to under General Discussion

Delete: Anthony Herman dba Mighty Good Used Cars – Appeal of Proposed Decision - Attorney unable to make it to Des Moines due to inclement weather.

Motion was made by David Petty to approve the agenda as amended. Seconded by Shearon Elderkin. Motion carried unanimously.

APPROVED AS AMENDED

APPROVAL OF MINUTES

December 9, 2008 minutes

Postponed until the February meeting.

November 10, 2008 minutes

Susan Heathcote made the following changes:

Page 9 – Change bolded *and* to unbolded *or*

Next sentence below – Change the *or* to bolded *and*

Page 17 – Keep the III. Administrative language the same as in the contract itself.

Motion was made by Shearon Elderkin to approve the November 10, 2008 minutes as amended. Seconded by Gene Ver Steeg. Motion carried unanimously.

APPROVED AS AMENDED

CONTRACT - IDALS-DSC – NONPOINT SOURCE PROGRAM ADMINISTRATIVE STAFFING ASSISTANCE

Allen Bonini, Supervisor of the Watershed Improvement Section presented the following item.

Recommendation:

The Department requests Commission approval of a contract in the amount of \$66,506.00 with the Iowa Department of Agriculture – Division of Soil Conservation (DSC) for one (1) year to provide administrative staffing assistance for existing and future section 319 nonpoint source pollution watershed improvement projects.

Funding Source:

This project will be funded through US EPA Section 319 Nonpoint Source Program grant dollars.

Background:

The Department shares in the funding of one position in IDALS-DSC to jointly support administration of Department 319 and DSC WPF/WSPF watershed improvement projects. Support for this shared position has been ongoing for several years.

Purpose:

The purpose of this contract is to retain DSC to assist the Department in the administration and implementation of Iowa's nonpoint source pollution management program through the retention of a position for this purpose in DSC's Field Services Bureau. The cost for this position, including salary and fringe benefits, DSC's associated indirect costs, and travel and per diem costs (excepting in-state transportation costs), shall be shared by both parties.

Consulting Firm Selection Process:

NA

Scope of Work:

For an outline of the **scope of work**, see the attached Section 5.1 of the Contract.

Motion was made by David Petty to approve the contract as presented. Seconded by Paul Johnson. Motion carried unanimously.

APPROVED AS PRESENTED

PUBLIC PARTICIPATION

JOHN KALLEN, representing MidAmerican Energy submitted the following comments:

- During today's meeting, DNR staff will be presenting several regulatory options for addressing the vacatur of the Clean Air Mercury Rule (CAMR).
- MidAmerican Energy Company encourages the Environmental Protection Commission to adopt Option 2 and rescind the Clean Air Mercury Rule provisions from the Iowa administrative rules by amending 567 IAC Chapters 23, 25, and 34.
- Continued compliance with the vacated CAMR is not possible and places both regulated entities and the Iowa DNR at risk of agency and/or third party enforcement actions.
- Imposing these current obligations on MidAmerican facilities would result in the inability to achieve compliance through no fault or negligence on the part of MidAmerican.
- At its October 14, 2008 meeting, the EPC deferred action on the DNR's Notice of Intended Action to rescind the CAMR provisions.
- MidAmerican believes it is necessary and appropriate to remove from the state air quality rules the CAMR regulations for the following provisions.
 - The U.S. Court of Appeals for the District of Columbia Circuit has original jurisdiction over appeals from federal agency rules, including those promulgated by the U.S. Environmental Protection Agency. The court's rulings vacating the CAMR are currently on appeal but have not been stayed. Therefore, the CAMR can not be implemented by the EPA, by the state of Iowa, or by any other state.
 - Mercury monitors are in place for all of MidAmerican's coal units. However, the monitors have not been certified (RATA) to collect valid compliance data. These monitors can not be certified because there is no approved standard by which to certify the mercury monitors. In addition, via letter dated June 19, 2008, the DNR communicated to regulated entities that as a result of the CAMR vacature, the January 1, 2009 certification requirement is no longer in place.
 - The accuracy of the mercury monitoring systems in a utility stack emissions measurement setting has considerable room for improvement. MidAmerican's experience has shown that significant differences between the Method 30B measurements (sorbent trap) and the mercury continuous emission monitor (CEMS) exist. The CEMS results are erratic and do not line up with actual Method 30B test results. Large unexplained swings in the measured stack mercury concentration have been observed.
 - To date, no CAMR compliance allowances have been allocated.
- Concerns were expressed by several EPC Commissioners at the October 14, 2008 meeting that rescinding these vacated federal regulations would unduly harm the environment and jeopardize the public health of Iowa citizens.
- MidAmerican wants to address these concerns by highlighting that we as a company are committed to operating in an environmentally responsible manner that is protective of public health and the environment.
- This commitment has been demonstrated in the near-term investment of over **\$400 million in significant capital projects** to reduce and monitor emissions from its coal-fueled electric generating units.

- Specific to mercury, the following investments have been made:
 - The Walter Scott Energy Center Unit 4 was among the first entities in the United States to install controls to reduce mercury emissions. Prior to the promulgation of the now vacated CAMR, MidAmerican committed to the installation of an activated carbon injection system at the Walter Scott Energy Center Unit 4 and continues to operate that system.
 - Continuous emissions monitors for mercury have been installed at all of MidAmerican's coal fueled facilities.
 - Additional mercury control is planned for the Walter Scott Energy Center Unit 3 and Louisa Generating Station. Further, the completed addition of a scrubber and baghouse at Louisa Generating Station and the ongoing addition of a scrubber and baghouse at Walter Scott, Jr. Energy Unit 3 have ancillary benefits of reducing mercury emissions (in addition to SO₂ and particulate) and position these entities to make significant reductions in mercury emissions.
- These projects were voluntarily accelerated in advance of the compliance requirements of CAMR and the **control equipment will continue to be operated** *regardless* of the final outcome of appeals in the CAMR litigation.
- In closing, MidAmerican requests that the EPA adopt DNR's proposed option 2 and rescind the vacated CAMR provisions as currently reflected in the Iowa regulations at 567 IAC 23.1 (2)(z), 23.1(5)(d), 25.3 and 34.2 through 34.308 including applicable tables, and all other references to requirements originating under CAMR.

MidAmerican would like to weigh in one additional matter.

- MidAmerican is aware that amendments to regulation and beneficial use of coal combustion residue are being considered by the DNR and will be discussed during today's meeting. MidAmerican would be pleased to answer any questions that the Commission and DNR has about our coal combustion residue and product management and to participate in any advisory committee formed.

Henry Marquard noted that a letter dated on January 6, 2009 from Cathy Wollums with MidAmerican Energy was mailed to each Commissioner.

MARIAN RIGGS GELB, Executive Director of Iowa Environmental Council asked that the Department rethink the its decision to postpone the rulemaking process on coal combustion waste. Coal combustion waste is known to contain heavy metals, which are known to be a threat to water supplies and human and aquatic life. A significant portion of coal combustion waste is being disposed of in unlined quarries. This poses a serious threat to ground water. This sort of testing has been done at other sites. There are four counties in Iowa with unlined landfills. The council is concerned that the disposal sites are close to water supplies and waterbodies. Iowa is also a recipient of coal combustion waste from several other states. The fact is, household garbage is managed more closely than coal combustion waste at this point and we think this is a huge loop hole in the state's management strategy. Therefore, at a minimum we are requesting that the DNR give all Iowans the opportunity to comment on this proposal to suspend the revisions in these rules. We therefore ask the DNR to do the following: provide statewide public lists of the July 2008 Chapter 567-108 revisions, take additional public comment on those revisions, and expand the stakeholder process to include representatives from public health,

environmental organizations and agencies. The Environmental Council would like to be apart of the process. Lastly, we would like to ask that public hearings be held in counties that have coal combustion disposal sites. By doing this, DNR can ensure that human health; safety and the environment are considered.

Henry Marquard noted a letter dated on January 8, 2009 from Plains Justice in regards to IAC Chapter 567-108 Beneficial Use Determinations: Solid By-products as resources and alternative cover material.

Susan Heathcote made mention of the coal-ash editorial in the Des Moines Register today.

(Both were distributed to Commissioners)

NEILA SEAMAN, Director of the Iowa Chapter of the Sierra Club addressed three agenda items. The Iowa Chapter of the Sierra Club never supported the Clean Air Mercury Rule and we were glad when the DC court vacated it. Now, Iowa was so diligent in addressing some of the concerns. According to the DNR's background document, the Clean Air Mercury rule was not intended to reduce emissions but rather to guarantee national emission reduction. DNR documents indicated that one of your considerations is that regardless of the options selected the state rule will allow modifications in permits to mitigate excessive mercury deposition from a major source will be retained. I'm curious as to how much testing will be completed to know exactly how much emission sources are contributing to ecosystem at the mercury deposition level. We have said this before and I'll say it again, the Sierra Club believes that additional fish testing needs to be done to know exactly how much of a mercury problem we have in the state.

If you approve option 2 as DNR recommends, one of the "cons" the facility may not continue to monitor for mercury. Yet in another section, it indicates that nearly all CAMR facilities will continue to monitor for mercury. Somehow we need to get a handle on how much mercury Iowans are being exposed to.

NPDES permit rule – the proposed changes are very minimal in bringing Iowa closer to compliance with federal law however, they are legislative changes strongly recommended by EPA to support and pass them today.

Construction permit demand for hearing procedures - We believe that these rules should be drafted by independent counsel and not the DNR legal staff. DNR is an advocate at these hearings, there to justify the Department's approval of the permit. We believe it's a conflict of interest if the DNR drafts the rules. We believe that the neighbors should have the opportunity to comment at the hearing. If you choose to move forward with a review committee, then those meetings should be subject to the open meetings law.

SONIA SKIDMORE, representing ICCI said that she would also support third party involvement in the drafting of the construction permit – demand for hearing rules. Neighbors and those impacted by the facilities that are being applied for, have spent a lot of time researching and gathering information regarding the impacts of CAFOs. They are truly experts and put far more

time in researching than supervisors do. Their input should count. If the permit does not satisfyfull requirements, then it should be denied before reaching the commission.

-----End of Public Participation-----

NOTICE OF INTENDED ACTION: CHAPTER 65 – PROVISIONS LIMITING THE SURFACE APPLICATION OF MANURE/OPEN FEEDLOT EFFLUENT ON FROZEN OR SNOW-COVERED GROUND

Claire Hruby presented the following.

Manure on Frozen and Snow-Covered Ground Response to Issues Raised at the December EPC Meeting

Two important issues were raised at the December EPC meeting regarding the draft rules.

1. Roofed deep bedded cattle operations are commonly classified as confinements, which means that the proposed rules apply to them when they exceed 500 animal units. In contrast, most open feedlots would not have to abide by the proposed rules unless they exceed 1000 animal units. In effect, this provides an incentive for cattle producers to raise their animals in open feedlots which generally pose a greater risk of runoff than roofed operations. Also, the classification of these operations as confinements means that there are separation distance requirements and more stringent restrictions on manure control. According to some producers, these operations do not have space available under the roof for more than 2 weeks of manure production. They have requested an exemption from the February 15th to April 15st prohibition on manure application when the ground is frozen or snow-covered.

Response: The Department recognizes that this type of operation poses less risk to water quality than un-roofed open feedlots and commends producers for choosing to raise animals in this manner. Based on the available research, we still believe there is an increased risk of loss of nutrients and bacteria from any type of solid manure if it is applied to frozen or snow-covered ground, especially in late winter.

It should be noted that the date restriction (February 15th to April 15th) ONLY applies to frozen or snow-covered conditions. The need to have enough storage capacity for 60 days is a worst-case scenario. In 2006, for instance, there was a big snowstorm that hit northwest Iowa in mid-March, but by March 27th no snow was left on the ground and by the 29th the ground had thawed completely. According to the Iowa Environmental Mesonet, the probability of 4 inch soil temperatures below 32 degrees F in Calmar (far NE Iowa) is 0% after April 10th. Snowfall over 1 inch is possible in Calmar until the end of April. In southern Iowa (Muscatine) the probability of frozen ground is 0% after March 21st and average snowfall does no not exceed 1 inch after April 15th.

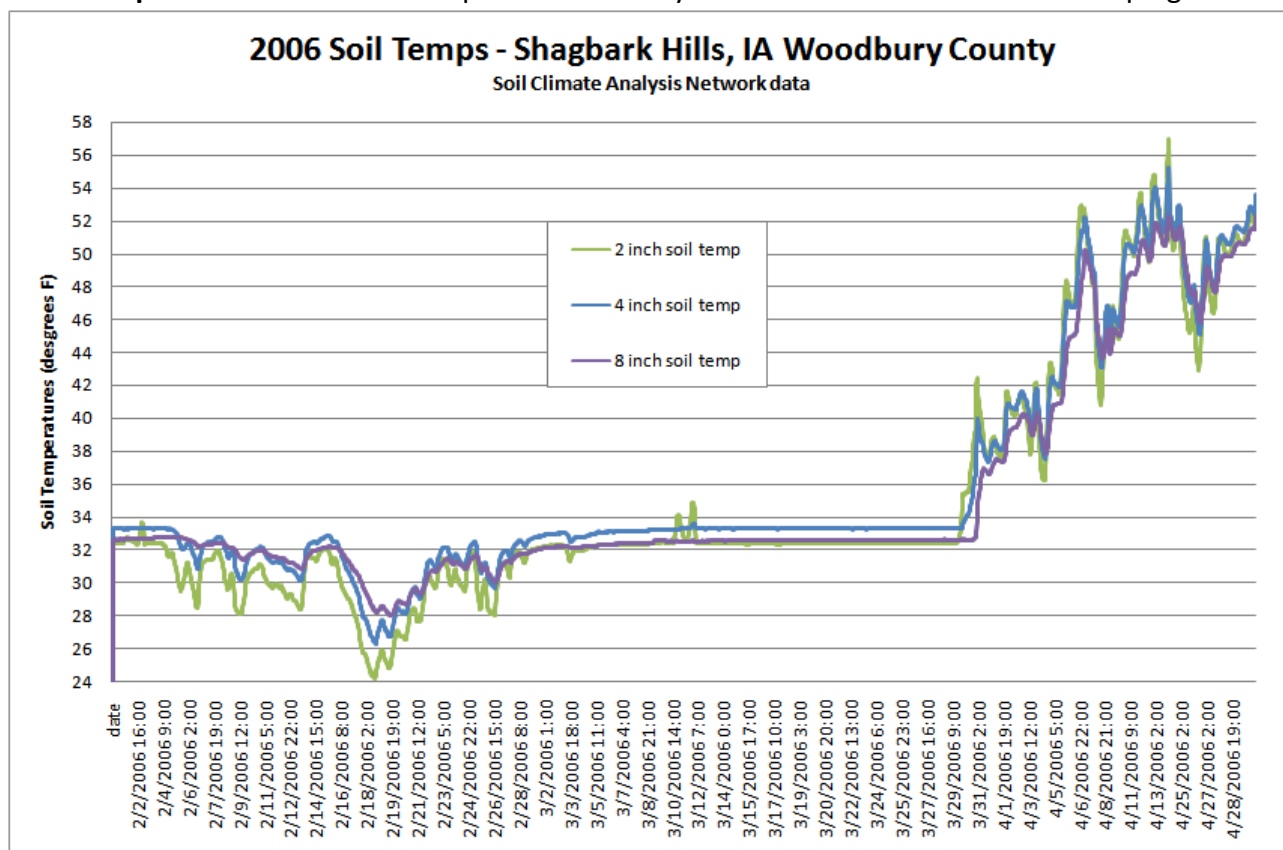
Deep bedded barns, such as hoop barns and monoslopes, have a variety of management practices that can be used successfully to operate the facility. Most of the manure and bedding is stored in the barn until the cattle are sold and the manure is removed from the building for land application or storage. Some operations do scrape the area by the feed bunks regularly to prevent manure build up in that area. That scraped manure can be moved back to the bedding pack or removed from the building for land application or storage, with the seemingly preferred practice to remove it from the building. An overview of the construction and operation of these barns presented by Shawn Shouse (ISU Extension) via webcast can be viewed at this address: <http://connect.extension.iastate.edu/p54261684/>.

A PIG (Program Implementation Guidance) has been developed and implemented to allow solid manure, including deep bedded manure, from confinement operations to be stockpiled as long as certain practices are followed. Since manure nutrients are more valuable due to the increased cost of commercial fertilizer, all producers should consider constructing a manure storage facility to protect the manure nutrients from weather in order to maximum use of these nutrients for crop production. This includes manure application and incorporation into the soil to minimize nutrient loss due to leaching or volatilization. While the manure storage facility requires an investment in the facility and time to move the manure in and out of the facility at an appropriate time, the investment should be worthwhile to protect the nutrients contained in the stored manure.

Current Iowa Code provisions regulate all confinements in the same manner regardless of the type of manure (solid or liquid) or the species-dependant nutrient content (cattle, poultry, or swine). Rather than attempt to provide a species-specific exemption to this proposed rule, we anticipate that legislative proposals during the upcoming legislative session may address this problem. To accommodate the concerns expressed by operators of deep bedded operations and to encourage this method of production over open feedlots, we propose to delay the effective date of 65.3(4)"c"(3) until October 1, 2010, for manure originating from deep bedded cattle operations. This will allow sufficient time for manure control issues to be resolved and give producers time to increase their storage capacity if necessary.

We would be more comfortable removing the predictive restrictions 65.3(4)"c"(1) and 65.3(4)"c"(2) than the date restriction in 65.3(4)"c"(3). National Weather Service predictions can change frequently and following or enforcing such a restriction may be very challenging.

2. Scraped snow and ice from open feedlots may contain some solid manure. Scraping the lots



is preferable to leaving the snow and ice on the lots both for reasons of animal health and potential runoff. Stockpiling large amounts of snow and ice is not a viable option either. Therefore, some exception should be made for this practice. Dave Petty stated that in a well-managed operation, where manure is scraped from lots prior to snow fall, scraped snow and ice is not likely to contain more than 10% manure solids. Determining percent solids in the field would be very difficult. Therefore, we feel the best option is to exempt scraped snow and ice (including incidental manure) from these rules with the understanding that producers are still responsible for any water quality violations that result from the application of these materials.

-----End of Clarie's comments-----

David Petty said that the weather is so unpredictable that putting dates in place will only limit operations from making the right choice. The dates don't match up with anything.

Commissioners went on to discuss the dates, why they are in place and where they came from.

Gene Ver Steeg said that he still doesn't see any emergency provisions. I also think we should delay all of these rules to see how the legislature will act on it. The three locations for hearings are not enough and the public comment dates should be extended. I think there will be a lot of interest.

Paul Johnson asked why there is a year delay before the rules will be implemented?

Claire Hruby said that it would allow time for producers to get into compliance, expand their storage systems, etc.

Randy Clark said that we can hold as many hearings as you would like, in any part of the state subject to the maximum 180 days after the last public hearing to adopt rules.

Motion was made by Gene Ver Steeg to table this rule until June to see what the legislature will do. Seconded by David Petty. Roll call vote went as follows: David Petty – aye; Susan Heathcote – nay; Sue Morrow – nay; Gene Ver Steeg – aye; Marty Stimson – nay; Paul Johnson – nay; Shearon Elderkin – nay; Henry Marquard – nay. Motion failed.

Susan Heathcote said that it would not be good to delay the rule based on the legislature's potential actions regarding this issue.

Paul Johnson asked what the surrounding states were doing.

Claire Hruby explained what Minnesota and Wisconsin have done.

Motion was made by Susan Heathcote to approve the Notice of Intended Action – Chapter 65. Seconded by Paul Johnson. Roll call vote went as follows: Susan Heathcote – aye; Marty Stimson – aye; Shearon Elderkin – aye; Paul Johnson – aye; David Petty – nay; Gene Ver Steeg – nay; Sue Morrow – aye; Henry Marquard – aye. Motion carried.

Wayne Gieselman said that he will commit to holding six public hearings near the field offices across the state.

APPROVED AS PRESENTED

DIRECTORS REMARKS

Director Richard Leopold gave the following update:

- Attended the Condition of the State address this morning. The Governor mainly touched on the floods and natural disasters that have affected Iowa.
- Will be attending a National Fish & Wildlife Conference in Washington, DC in mid-February. Also plan to meet with congressional delegation and Secretary of Ag, Tom Vilsack.
- There have been a few management changes within the Department. Lowell Joslin retired as Chief of the Law Enforcement Bureau, Marion Conover retired as Chief of the Fisheries Bureau. Pat Boddy, our new Deputy Director will start on January 20th.
- The Governor's Water Resources Council met in December for the first time. The will continue to move forward as mandated.

- The Department's main focus is on the budget. With recent budget constraints, we continue to try and maintain quality services with the amount of staff time available.
- The Sustainable Funding initiative continues to move forward. Minnesota just passed their Sustainable Funding bill last session.

INFORMATION

PROPOSED RULE – AMEND IAC 567 CHAPTER 134 - CERTIFICATION OF GROUNDWATER PROFESSIONALS AND UNDERGROUND STORAGE TANK (UST) COMPLIANCE INSPECTORS

Elaine Douskey presented the following item.

The Commission is asked to review the Notice of Intended Action to amend administrative rule 567—Chapter 134 “Underground Storage Tank Licensing and Certification”

The Commission adopted the UST Fund Board's existing UST installer and installer inspector licensing rules by emergency rule making in July, 2007. These revised rules are required to initiate a notice of intended action to fully implement a licensing program applicable not only to UST installers and installer inspectors but persons who remove and test USTS.

Changes: These rules are being modified as follows:

- Required insurance liability coverage for UST professionals is being raised from \$250,000 to \$1,000,000. This coverage amount was required through legislation in 2007, and further is consistent with industry standard.
- Requires licensing of people of remove tanks (including education, training and exam criteria).
- Clarifications on what type of work must be performed by a licensed professional vs. service technicians.
- Requirement for inspections of installations using departmental checklist & submittal.
- Increases the licensing fee for companies and individuals to \$200 biennially (currently it is \$50/yr).
- Expands the reciprocity criteria (recognizing training and exams from other states or equipment manufacturers – on a DNR approval basis)
- Adds a duty for UST professionals to report suspected & confirmed releases (currently the UST owner/operator must report these)
- Clarification on conflict of interest activities.

The commission will be requested to approve this Notice of Intended Action at their February 2009 meeting.

INFORMATION

REFERRALS TO THE ATTORNEY GENERAL – 76 LTD.

Kelli Book, Attorney for the Department presented the following information. Mark Heiderscheit is here with me today from Field Office 6.

The DNR seeks referral of 76 Ltd. to the Attorney General's office for appropriate enforcement action due to the numerous violations of water quality regulations, solid waste regulations, and air quality regulations. 76 Ltd. is located in Keota and is owned and operator by John Klien, Kevin Greiner and Mark Beenblossom. The facility consists of four interconnected confinement building, two hoop buildings, and an earthen manure storage structure. The facility has 2,342 head of swine.

Our office got involved on September 19, 2008 to investigate a complainant about a road condition in a nearby park. Mark arrived at the facility and he noticed that there was standing water. The water was purple in color and tested >3mg/L for ammonia. An inspection of the earthen manure storage structure revealed the following: erosion of the outer berm; poor vegetation and weeds; trees and woody vegetation around the outer berm; less than two feet of free board; rodent holes and a discharge from the west side of the earthen manure storage structure to the road ditch. Mr. Heiderscheit also observed a burn barrel at the facility. Mr. Heiderscheit spoke with Mr. Bethke and informed him of the manure discharge. Mr. Klein indicated that they would bring in a vacuum truck the following day to remove the discharge from the ditch. Mr. Bethke was only one in three who had the proper manure applicator certification.

Mr. Heiderscheit followed up the next day and noted that a spray irrigator was being used. He also observed purplish colored liquid being discharged from a tile line to the West Fork or Crooked Creek. Mr. Heiderscheit contacted the facility and had them turn the pumps off and stop discharge immediately. Mr. Heiderscheit visited locations along the creek to check for signs of a fish kill. There was no evidence of a fish kill at this location.

Mr. Heiderscheit visited the site again on the 21st of September. The discharge had stopped however, Mr. Heiderscheit observed dead animals on top of the compost pile and leachate flowing downhill from the pile. The burn barrel contained various solid waste materials, including paint cans, plastic bottles, etc.

On the 23rd of September, the basin had not yet been pumped down to meet the required two feet of freeboard. There were still issues with poor vegetation and erosion of the berm. The field office informed Mr. Klein that they would visit the site every other day until the earthen manure storage was pumped down.

On September 24th, DNR Field Office 6 issued a Notice of Violation for numerous water quality, air and solid waste violations. The letter required 76 Ltd. to take some action steps. It also indicated that the matter was being reviewed for further enforcement.

On September 26th, the earthen basin storage structure had not been pumped down to meet the two feet of freeboard. DNR personnel noted continued problems with the berm.

October 2nd, the DNR staff conducted another follow up visit. During this visit, the person who was pumping manure at the facility was not properly certified to be handling manure for 76 Ltd. They also noted that the earthen manure storage structure hardly changed from the other day. DNR personnel also noted manure solids and liquids on the ground between the storage structure and the confinement buildings. A total of three burn barrels were also noted at the facility.

On October 7th, the earthen manure storage structure failed to meet the minimum requirement of two feet of freeboard; however, it was only within a few inches.

On October 15th, DNR personnel conducted their final visit. There appeared to be no changes since October 7th. A majority of the grass and weeds had been removed; however, there was some grass that still need to be removed.

The Department is requesting that this matter be referred to the Attorney General's office for the multiple number of air, water and solid waste disposal violations. One of the arguments that you will hear from 76 Ltd. is that the problems have been corrected and the facility is taking steps to prevent future violations. While we appreciate that, there were still large violations that need remedial action.

Eldon McAfee, Attorney representing 76 Ltd. stated the following information. Mr. John Klein was also present.

I will start by saying, 76 Ltd. does not deny that violations occurred. John and his partners regret that it happened, but we're here today to answer questions and to point out our side of it. Our goal is not to "try" our case but I would really appreciate it if the Department would give producers, such as John the chance to sit down and talk to the Department about this case before putting it on the agenda for referral. The report itself is inaccurate it's just not the whole story. The report doesn't tell you that John and his partners contacted the DNR last April because they could tell they were going to have a problem with their basin storage before the thaw.

John Klein said that the Department staff referred us to the NRCS to apply to them for permission to apply on CRP ground. We confided with their requirements and the soil testing.

Eldon asked John to explain what went wrong.

John Klein said that we had extraordinary rains after this spring that continued to be a problem with our MMP and run-off.

Eldon McAfee said that then in September the basin ran over. 76 Ltd. truly regrets that it happened and should not have happened. They have put measures in place to keep a closer eye on the level of the basin, but that doesn't excuse what happened. You also haven't heard about the full cooperation that 76 Ltd. did. One of the violations the DNR is stating is the failure to be certified. John is not certified but the manager with John was. They were both hooking up the

equipment in an emergency situation yet the Department cited them. I believe they were in compliance with the law. They were trying to reconcile the situation and they were cited by the Department. Again, this does not excuse what happened, but they are missing facts. It would have been very beneficial if the Department would have sat down with us. Then you have the tile line situation.

John Klein said with direction from the inspector and our own judgment we needed to move our traveling irrigators in order to avoid over application in one area. Before we moved to a different spot, I walked the area, but missed a tile hole.

Eldon McAfee asked John if he is now a certified applicator.

John Klein said yes.

Eldon McAfee said that you know what the weather was like this summer. They also didn't want to over apply on CRP ground, they needed to wait for the crop to come up. It was a late fall. No excuses, just explaining the situation. But this is why he couldn't get it below the freeboard level. He did eventually get it below the level. Regarding the burn barrels, they have since been removed.

John Klein explained the photos of the composting pile. What you see are still born pigs and their after birth. They were put on top of the compost pile and then they were to be covered up. The manager understood that you have 24 hours to properly cover the dead animals, he thought he was well within the time frame.

Eldon McAfee said that they did obtain an engineer to evaluate the basin. The engineer had some basic recommendations, but overall the storage is sound but there are some issues to address with the trees. The larger ones have been removed. Mark has had questions for the engineer and the engineer has promptly responded.

Henry Marquard asked if the rain was the main issue for not being able to pump out the basin or to keep it at the minimum level.

John Klein said yes.

David Petty said that the compost pile looks fresh. Those pigs haven't been there but for a few hours.

Eldon McAfee said that he feels these issues can be addressed within the DNR.

Susan Heathcote asked why it took 27 days to meet the freeboard level?

John Klein said that our MMP only allows for a maximum amount to be applied and we applied the maximum amount. We felt we were at the level of compliance.

REFERRAL DENIED

REFERRALS TO THE ATTORNEY GENERAL – MAPLE GROVE FARMS, LLC

Kelli Book presented the following information.

The Department asks referral of Maple Grove Farms, due to their failure to submit manure management plan updates and compliance fees. Maple Grove owns several animal feeding operations in northwest Iowa and each of the animal feeding operations is required to submit an updated manure management plan and compliance fee each year.

The Ohlendorf Site is located in Plymouth County. The 2007 updates and compliance fees were due Dec. 1, 2007. On February 8, 2008, DNR Field office sent a notice of referral to Maple Grove. To date, the 2008 updates and fees have not been submitted as well.

The Maass Site is located in Plymouth County. The updated MMP and compliance fees were due June 1, 2008. A notice of the requirements were sent as well as a notice of violation. A referral letter was sent at a later date as well. To date, the MMP update and fee have not been submitted.

The Nilles Site is located in Plymouth County. The updated MMP and compliance fees were due July 1, 2008. A notice of the requirements were sent as well as a notice of violation. A referral letter was sent at a later date as well. To date, the MMP update and fee have not been submitted.

Maple Grove Facility #59056 is also located in Plymouth County. The updated MMP and compliance fees were due August 1, 2008. A notice of the requirements were sent as well as a notice of violation. A referral letter was sent at a later date as well. To date, the MMP update and fee have not been submitted.

The Gallas Site is located in Plymouth County. The updated MMP and compliance fees were due on September 1, 2008. A notice of the requirements were sent as well as a notice of violation. A referral letter was sent at a later date as well. To date, the MMP update and fee have not been submitted.

The Beaver Site is located in Plymouth County. The updated MMP and compliance fee for the facility were due on February 1, 2008. A notice of the requirements were sent as well as a notice of violation. An administrative order was issued to the facility that required them to submit their MMP within 30 days and a penalty of 3,500 dollars. The order was not appealed. To date, the MMP update, compliance fees and penalty have not been submitted.

DNR has been in contact with the Maple Grove company. Ms. Grubb with Maple Groves received the list of facilities that are overdue and what was needed. She indicated that they would get this information immediately. Based on their continued failure, we request that this matter be referred to the Attorney Generals' office. Our staff has spent a lot of hours sending letters and giving them the opportunity to come into compliance.

Motion was made by David Petty to refer Maple Grove Farms to the Attorney General's office. Seconded by Susan Heathcote. Motion carried unanimously.

REFERRED

UPDATE ON COAL ASH MANAGEMENT AT QUARRY/MINE RECLAMATION SITES

Chad Stobbe submitted the following information.

**Environmental Protection Commission:
Update on Coal Ash Management at Quarry/Mine Reclamation Sites**
(January 13, 2009)

- The department completed a review of solid waste regulations 4 years prior, which identified several solid waste chapters as outdated and in need of rulemaking. IAC 567 Chapter 108, titled “Beneficial Use Determinations: Solid By-Products As Resources And Alternative Cover Material” was one of those rules that was identified, however, due to a lengthy rulemaking regarding municipal solid waste landfill regulations (Chapter 113), this rulemaking was delayed.
- In the spring of 2008, the department was petitioned by the Iowa Utility Association (IUA) to revise certain provisions of Chapter 108. The most significant revisions requested were to remove all references to “fill material” and to clarify that fill projects are not beneficial use projects, as these beneficial fill activities more closely resemble landfills and should be regulated according to landfill rules. The department has specific landfill rules for coal combustion wastes (Chapter 103), but are minimal and need to be revised at the same time as the Chapter 108 revisions.
- Given the department’s rulemaking plan wanted to expand the scope of the rulemaking beyond what was being proposed in the IUA’s petition, the petitioner agreed to additional time in order to provide stakeholders (utilities, environmental groups, quarries, solid waste industry, etc.) with a thorough opportunity for participation and discussion prior to initiating any formal rulemaking.
- In July 2008, the department circulated a memo to stakeholders outlining the proposed amendments, including a draft version of the rule, with the request for feedback.
- In October 2008, the department circulated a “Stakeholder Comment Summary and Next Steps” memo that attempted to address the comments received. In an effort to provide access into the rulemaking process, all written comments submitted have been posted on a webpage specifically dedicated to this rulemaking (<http://www.iowadnr.com/waste/policy/beneficialuse.html>).
- Based on those comments, the department incorporated revisions that ultimately changed the scope of the rulemaking. It was again reiterated that the proposed amendments were not a part of any formal rulemaking, and that the department would provide another opportunity for feedback on the proposed amendments prior to initiating any formal rulemaking.
- Regarding the use of CCR for reclamation at quarries, it was apparent from the comments received that there was a strong opposition from industry regarding the additional cost of compliance in

upgrading to meet the same requirements as landfills, such as groundwater monitoring, liners, and financial assurance.

- The reoccurring theme was that due to the lack of site specific monitoring data from Iowa quarries/mines using CCR for reclamation, that the suggestion that there's an environmental impact lacks scientific backing to substantiate the proposed level of environmental regulation. While the department can document that some constituent migration is occurring at existing permitted CCR landfills, reclamation sites are not currently required to collect groundwater data.
- Based on the comments received, the department proposed incorporating rule provisions for existing quarry reclamation sites to gather site geology and groundwater monitoring data, to assess whether constituents are migrating offsite. This data would then be irrefutable and would be used to direct additional rulemaking regarding the appropriate level of environmental controls (liner, leachate collection systems, monitoring, etc.) for these sites.

Beneficial Use Fill Project Requirements

(IAC 567 Chapter 108.6 - 108.7)

Analytical Testing of Fill Material:

- 1) Toxicity Characteristics Leaching Procedure (TCLP, EPA Method 1311).
- 2) Synthetic Precipitation Leaching Procedure (SPLP, EPA Method 1312) – less than or equal to 10 times the maximum contaminant levels (MCL) for drinking water. Foundry sand and coal combustion by-products may limit the SPLP analytes to total metals for drinking water.
- 3) Total Metals Testing – By-product must meet the department's statewide standards for soil pursuant to IAC 567 Chapter 137. Arsenic levels shall be consistent with the statewide standards for soil or the naturally occurring (i.e. background) arsenic levels of the soil, whichever is greater. *"Statewide standards" are standards prescribed in the LRP which represent concentrations of contaminants in groundwater and soil for which normal, unrestricted exposure is considered unlikely to pose a threat to human health.*
- 4) The solid by-product shall produce a fill that has a pH greater than or equal to 5 and less than or equal to 12.

Site Requirements:

- 1) The by-product shall not be placed in a waterway, wetland or any waters of the state or extend below or within 5 feet of the high water table.
- 2) The by-product shall not be placed within the 100-year floodplain, unless in accordance with all local and department regulations, including IAC 567 Chapter 71.5(455B).
- 3) The by-product shall not be placed closer than 200 feet to a sinkhole or to a well that is being used or could be used for human or livestock water consumption.

Solid By-Product Management Plan Requirements:

- 1) Lists the source(s) of the solid by-product.
- 2) Lists procedures for periodic testing of the solid by-product to ensure that the chemical and physical composition has not changed significantly.
- 3) Provides a description of storage procedures including:
 - Storage location(s) and maximum anticipated inventory, including dimensions of any stockpiles.
 - Run-on and run-off controls, which may include a storm water NPDES permit.
 - Management practices to minimize uncontrolled dispersion of the solid by-product.
 - Maximum storage time, not to exceed 6 months unless authorized in writing by the department.

- 4) All generators shall maintain all records related to the solid by-product management plan for a minimum duration of five years and shall submit to the department within 60 days of the end of the calendar year the following information for each beneficial use project or activity:
- The location of the project.
 - The tons of solid by-product utilized for the project.

Susan Heathcote asked what environmental groups were invited to the stakeholder work groups.

Chad Stobbe said that we sat down with folks from Plains Justice and sent the provisions out to Iowa Environmental Council, Sierra Club and posted them on our website for feedback.

Susan Heathcote asked that we keep environmental groups informed and invited as well as the Department of Public Health.

Paul Johnson said that he is concerned with fly ash problems from other states. What are their requirements for dealing with fly ash?

Chad Stobbe said that he will look into it. Iowa requires toxicity testing before disposal of fly ash in the landfill. This tests for mercury and other heavy metals.

INFORMATION

REVIEW OF REGULATORY OPTIONS FOR ADDRESSING THE VACATUR OF CAMR

Jim McGraw presented the following information:

At the October 2008 Commission meeting, the Department presented an information item proposing rule changes to remove from the state air quality rules EPA's Clean Air Mercury Rule (CAMR) provisions that the United States Court of Appeals for the District of Columbia Circuit (the D.C. Court) vacated. The D.C. Court found CAMR to be unauthorized under the federal Clean Air Act (CAA). Instead of proceeding with the rulemaking process, the Commission requested that the Department provide information regarding state regulatory options for addressing the vacatur of CAMR. This request was reiterated during the November 2008 Commission meeting.

The summary presents for the Commission's consideration possible regulatory options for addressing the federal vacatur of CAMR. The summary also includes pros and cons associated with each option and additional considerations that may be relevant in the decision making process.

The Department is recommending that option 2 be selected. As indicated in the summary, option 2 would align the state's removal of the CAMR provisions from the administrative rules with the federal vacatur of CAMR, thereby providing regulatory certainty for affected sources. Nationwide, the EPA administered cap and trade program for mercury, which was the most significant component of the CAMR provisions, no longer exists. Although removal of the CAMR provisions would remove the requirement to continue monitoring mercury emissions,

nearly all CAMR-affected units have indicated that they will continue to monitor mercury emissions.

Please see the background document for more information on the vacated CAMR provisions, the D.C. Court decision, and the impacts of the vacatur.

Based on direction provided by the Commission after their review and consideration of the options, the Department will bring a Notice to the Commission for decision at a future Commission meeting.

Regulatory Options for Addressing CAMR Vacatur

Option	Pros	Cons	Notes
1. Retain Clean Air Mercury Rule (CAMR) provisions in Iowa Administrative Code (IAC) until EPA promulgates a new rule.	-CAMR provisions can be removed from IAC at same time new EPA rules are adopted.	-Regulatory uncertainty for Electrical Generating Units (EGUs) and other stakeholders. -EGUs will have to request variances from vacated requirements. Staff time will be used to process variance requests. -EPA technical amendments for Hg monitoring have not been adopted into IAC.	-No environmental benefit gained by waiting to remove CAMR provisions from IAC. - Nationwide, EPA administered cap and trade program for Hg no longer exists.
2. Remove CAMR provisions from IAC.	-Aligns with federal rule vacatur. -Provides regulatory certainty for EGUs.	-Facilities may not continue monitoring Hg emissions.	-Nationwide, EPA administered cap and trade program for Hg no longer exists. -Nearly all CAMR-affected units have indicated they will continue to monitor Hg.
3. Remove CAMR provisions from IAC and require emissions monitoring.	-Removes CAMR cap and trade provisions. -Retains some Hg emissions monitoring.	-Adoption will require removal of reference to EPA submittal requirements. -Additional staff will be needed to QA data, review/approve plans, develop database and store data. - Technical problems with EPA monitoring methods still exist.	-Hg emissions data could be useful for future planning activities. -Unknown whether new EPA rule would have similar monitoring requirements. -EPA is not fixing current monitoring method problems.
4. Remove CAMR provisions from IAC and require emissions monitoring but set CAMR caps for Iowa as new Hg emissions limits.	-Same as Option 3. -Caps Hg emissions from Iowa EGUs.	-Same as option 3. -Connection between Iowa EGU emissions and Hg deposition in Iowa is not established. -Future federal Hg emission limits and control equipment requirements will be different and may include limits for other HAPs.	-Hg emissions data would be used to demonstrate compliance with EGU caps. However, problems with EPA monitoring methods still exist.
5. Remove CAMR provisions from IAC	-Allows EGUs to buy Hg allowances or	-Limited pool of Hg allowances could mean controls would always	-A regional cap and trade program would likely be

and adopt statewide cap and trade program.	control emissions. -Hg emissions from EGUs would be capped.	be cheaper. -Significant resources, including economics experts and IT resources, needed to administer program.	more effective. -Unknown whether other states would participate.
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Additional Considerations:

- 1) Regardless of option selected, the state rule (567 IAC 22.3(5)) allowing modification of permits to mitigate excessive Hg deposition from a major source will be retained. This provision allows the Department to evaluate possible major source contributions to ecosystems found to have high levels of mercury deposition.
- 2) Mercury controls have been installed on one EGU and are still being operated despite the vacatur of CAMR. Some co-benefits from the control of NOx and SO2 emissions from the implementation of Phase I of CAIR will occur statewide at EGUs where controls have been installed for CAIR and are being operated. "Co-benefits" mean that mercury emissions will also be reduced at EGUs controlling for NOx and SO2.
- 3) The vacatur of the New Source Performance Standards (NSPS) for mercury emissions from coal-fired boilers (40 CFR Part 60, Subpart Da) is not impacted since 112(g) currently applies to new EGUs. Under Clean Air Act (CAA) section 112(g), if EPA has not set applicable emission limits for a category of listed hazardous air pollutant (HAP) sources, construction of a new major source or modification of an existing major source in the source category may not occur unless the Administrator (or delegated state or local agency) determines on a case-by-case basis that the unit will meet standards equivalent to maximum achievable control technology (MACT). Any EGU that has not completed construction prior to the Court mandate on March 14, 2008, may potentially be subject to case-by-case MACT under CAA section 112(g). Since EPA has delegated authority to the DNR to implement and enforce 112(g) in Iowa, construction permit staff is evaluating HAP emissions and establishing MACT for new EGUs.
- 4) New federal rules will likely require control of additional HAPs from EGUs, such as organic HAPs, particulate metals, and acid gases. If the state imposes mercury limits now, owners and operators of EGUs may later be required to conduct costly retrofitting of different controls than would be required for controlling mercury alone.

CAMR Background Document

CAMR Regulations

In May 2005, EPA promulgated the Clean Air Mercury Rule (CAMR). The purpose of CAMR was to permanently cap and reduce mercury emissions from coal-fired electrical steam generating units (EGUs). The first phase of CAMR was to begin in 2010. The second phase of CAMR was to begin in 2018.

With the assistance of a stakeholder workgroup, the Department chose to adopt EPA's cap and trade programs for regulating mercury emissions from EGUs. EPA subsequently approved the state's CAMR regulations into Iowa's State Implementation Plan (SIP) in 2007.

Under the CAMR cap and trade program, EPA provides the state with a "budget" of mercury allowances, which the Department then allocates to each affected coal-fired EGU. Each allowance is equal to one ounce of mercury emissions. Upon allocation of mercury allowances, coal-fired EGUs can then trade them through an EPA-managed trading program. At the end of each year, each affected EGU must hold one allowance for each ounce of mercury emitted.

CAMR was not intended to reduce emissions at specific EGUs, but instead was intended to guarantee national emissions reductions. The EGUs were allowed the flexibility to determine the most appropriate method of compliance by securing allowances, reducing emissions, or instituting some combination of these approaches.

CAMR Vacatur

The D.C. Court issued its decision to vacate CAMR on February 8, 2008, and issued the mandate making the decision final and effective on March 14, 2008. The D.C. Court's decision is available on-line at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200802/05-1097a.pdf>

EPA will not be operating the CAMR trading program, at least not as originally planned. Other federal CAMR regulations separate from the trading program were also vacated in the D.C. Court's decision.

The vacatur of CAMR also means that section 112(g) applies to new EGUs. As part of the D.C. Court's decision to vacate CAMR, the D.C. Court found that EPA failed to follow the comprehensive de-listing process for EGUs required under section 112.

Section 112 of the CAA includes provisions to require MACT for major sources of HAP emissions in the event that EPA does issue MACT standards. Under section 112(g), if EPA has not set applicable emission limits for a category of listed HAP sources, construction of a new major source or modification of an existing major source in the source category may not occur unless the Administrator (or delegated state or local agency) determines on a case-by-case basis that the unit will meet standards equivalent to MACT. EPA has delegated authority to the Department to implement and enforce 112(g) in Iowa.

Under CAA section 112(j), if EPA fails to promulgate a standard for a listed category or subcategory by the dates established in the CAA, states must conduct a case-by-case MACT

determination for each subject source category or subcategory and include the MACT requirements in each facility's Title V Permit. However, section 112(j) does not apply to EGUs at this time because it was not among the source categories listed by EPA when it implemented section 112 and the MACT program.

Department Activities to Date

On June 19, 2008, the Department notified in writing owners and operators of CAMR-affected EGUs that they were not required to submit a CAMR permit application by the July 1, 2008, deadline. They were also notified that they were not required to comply with the upcoming mercury monitoring deadlines, including the January 1, 2009, deadline for mercury monitoring certifications. However, the Department recommended that owners and operators of CAMR-affected EGUs proceed with their mercury monitoring programs until such time as final rules to remove the CAMR-related provisions are adopted and effective in the IAC.

The Department further discussed the implications of the CAMR vacatur with stakeholders at Air Quality Client Contact meetings on August 14 and November 13, 2008. The Department also hosted a conference call with EGUs to discuss both CAMR and the Clean Air Interstate Rule (CAIR) on November 5, 2008.

Henry Marquard said that we will put this on the agenda as a decision item for next month.

Jim McGraw confirmed that the Commission was requesting that the Department present a vacatur option and a vacatur option with some type of monitoring required, for decision next month.

Henry Marquard also said the he would like to have more information about monitoring and other options. I believe that commissioners think option 3 wouldn't be a bad compromise.

Marty Stimson suggested that Commissioner Heathcote talk one on one with DNR staff. Air monitoring is a very complex issue and hard to understand. Because of the complexity of this issues, can we do a summary in layman's terms.

Jim McGraw distributed a copy a Review of Assessment Methods for Estimating Atmospheric Deposition of Mercury Compounds in Iowa to each Commissioner.

INFORMATION

FINAL RULE – CHAPTERS 22 AND 23: AIR QUALITY PROGRAM RULES – ADOPTION OF FEDERAL AIR QUALITY STANDARDS AND REVISIONS TO AIR CONSTRUCTION PERMIT REQUIREMENTS

Christine Paulson from the Air Quality bureau presented the following item.

The Department is requesting that the Commission adopt amendments to Chapter 22 "Controlling Pollution" and Chapter 23 "Emission Standards for Contaminants" of the 567 Iowa Administrative Code.

The primary purpose of the rule changes is to adopt new federal regulations affecting stationary internal combustion engines, gasoline distribution facilities and surface coating operations, and to amend the state air construction permitting requirements to better accommodate the new regulations. Additional, minor amendments to other federal regulations are also being adopted.

Notice of Intended Action was published in the Iowa Administrative Bulletin (IAB) on November 5, 2008, as ARC 7306B. A public hearing was held on December 8, 2008. The Department did not receive any comments at the public hearing. The Department received two written comments before the public comment period closed on December 9, 2008.

The public comments submitted pertain to Item 1 and Item 7 and are described briefly in the rulemaking preamble for the respective items. Additionally, a public participation responsiveness summary is attached to this agenda item. The Department did not make any changes to the adopted rules from what was published in the Notice.

Over the last year, EPA finalized several new air quality regulations under two programs authorized by federal Clean Air Act (CAA), the New Source Performance Standards (NSPS) program and the National Emissions Standards for Hazardous Air Pollutant (NESHAP) program. These programs require new and existing facilities in a particular industry sector that construct and operate specific equipment to meet uniform standards for air pollutant emissions.

This rulemaking includes adoption of new federal NSPS and NESHAP impacting facilities that previously had few, if any, air quality requirements. Because of the potential impacts to small businesses and previously unregulated facilities, the Department developed implementation strategies in conjunction with the rulemaking. The strategies include cooperative efforts with University of Northern Iowa – Iowa Air Emissions Assistance Program (UNI), Iowa Department of Economic Development (IDED), the Linn and Polk County local air quality programs, and other interested associations and organizations, to provide outreach, education and compliance assistance to stakeholders. The Department's outreach efforts began in mid-2008, continued during the rulemaking process, and will continue upon final adoption of these rules.

It is hoped that these new rules in conjunction with the Department's outreach efforts will result in reductions in air toxic and other air pollutant emissions while minimizing the regulatory burden to small businesses and other affected facilities.

The specific items included in the adopted rules are summarized below. Because adoption of new NSPS and NESHAP are the primary reason for this rulemaking, these changes are paired with the items describing the complementary changes to permit requirements.

New requirements for Stationary Internal Combustion Engines (Items 1, 3, 4, 5 and 6)

New Source Performance Standards (NSPS) – Items 3 and 4

The Department is adopting new NSPS for stationary spark ignition internal combustion engines (SI engines). SI engines are typically gasoline fueled, but also include engines with spark plugs that burn other fuels. SI engines are used at power plants, industrial sources and other facilities to generate electricity and to power pumps and compressors.

The standards for new SI engines will limit emissions of NO_x, carbon monoxide (CO) and volatile organic compounds (VOC). All sizes of new stationary SI engines are covered under this NSPS. The NSPS phases in more stringent emissions requirements for engines with later manufacture dates. The standards are similar to the NSPS for stationary compression ignition (CI) engines (diesel engines) that the Department adopted in February 2007.

National Emission Standards for Hazardous Air Pollutants (NESHAP) – Items 5 and 6

The Department is adopting recent federal amendments to the NESHAP for stationary reciprocating internal combustion engines (RICE). The amendments include standards to limit hazardous air pollutants (HAP), or air toxics emissions, from new and reconstructed engines located at area sources. The amendments also include standards to regulate HAP from smaller-sized engines located at major sources.

Area sources are usually smaller commercial or industrial operations that typically release lesser quantities of HAP. Specifically, area sources have potential emissions less than 10 tons per year (tpy) of any single HAP and less than 25 tpy of any combination of HAP. Facilities that have potential HAP emissions greater than or equal to these levels are classified as major sources of HAP.

Generally, the RICE NESHAP requires new and reconstructed engines to meet the NSPS requirements for CI or SI engines. Existing engines located at area sources are not covered under these new regulations. However, EPA has published a notice in the Federal Register stating that EPA plans to issue standards in the future for existing engines located at area sources.

Construction Permit Requirements for Small, Stationary Engines – Item 1

Currently, stationary internal combustion engines less than 400 horsepower (HP) are eligible to be exempt from the requirement to obtain a construction permit. When this exemption was originally adopted into state rules, there were no federal requirements applicable to these smaller engines. The new NSPS and NESHAP regulations require all sizes of new, modified or reconstructed engines to meet certain emissions requirements.

To address this, the Department is amending the 400 HP exemption to require submittal of a registration certifying NSPS and NESHAP compliance prior to installation of the engine. The registration will guide owners and operators of affected facilities through a series of questions that will assist them in ensuring that the engine they order and install complies with the NSPS and NESHAP, while still allowing the engine to be exempt from the requirement to obtain a construction permit. The registration will also assist the Department air quality and field office staff to ensure that affected facilities are in compliance.

New Requirements for Gasoline Distribution and Dispensing (Items 5 and 7)

NESHAP for Bulk Gasoline Distribution

The NESHAP for gasoline distribution applies to bulk gasoline facilities, such as bulk plants, bulk terminals, and pipeline breakout stations. The NESHAP will reduce VOC and HAP from gasoline vapors, including benzene emissions.

Bulk terminals and pipeline breakout stations are required to control emissions through submerged filling at tanks and loading racks and controls on gasoline storage tanks. Owners and operators of larger terminals must capture and control gasoline vapors at the loading rack.

Bulk plants have lower monthly gasoline throughputs than terminals or breakout stations. Owners and operators of bulk plants are required to control gasoline vapors by use of submerged filling at tanks and loading racks. The Department estimates that there may be 100-200 bulk plants affected by the NESHAP. However, owners and operators of bulk gasoline plants are already required to use submerged filling at tanks under existing state rules for underground storage tanks (UST) and flammable liquids.

The Department is working with Petroleum Marketers and Convenience Stores of Iowa (PMCI) to identify the affected bulk plants. The Department met with PMCI and other stakeholders on August 21 and plans to continue working closely with stakeholders.

NESHAP for Gasoline Dispensing Facilities

The second area source NESHAP being adopted affects gasoline dispensing facilities, such as gas stations. Like the NESHAP for bulk facilities, this NESHAP will reduce VOC and HAP from gasoline vapors, including benzene emissions. These standards apply to gasoline cargo tanks (trucks) and each storage tank. The NESHAP does not apply to equipment used for refueling motor vehicles (gasoline pumps).

The gasoline dispensing NESHAP requirements are based on the actual, monthly throughput of gasoline at the facility. Under the NESHAP, owners and operators of smaller facilities are required to follow specified "good management practices" (GMP) to minimize gasoline evaporation. Owners and operators of medium sized facilities are required to follow GMP and use submerged filling of gasoline tanks. Owners and operators of large facilities must employ GMP, submerged fill, and a vapor balance system during storage tank loadings.

Owners and operators of affected gasoline dispensing facilities (GDF) are already required to implement GMP and submerged fill under existing administrative rules for UST and flammable liquids. Vapor balancing is not required under existing state rules. The Department estimates that approximately 250 larger GDF will need to implement vapor balancing. However, approximately 50 of these facilities already use vapor balancing, and nearly all of the remaining 200 facilities will have until January 2011 to comply with the NESHAP requirements.

The Department has been corresponding regularly with EPA, PMCI and a number of affected facilities regarding the new requirements. The Department met with PMCI and other stakeholders on August 21st and plans to continue working closely with stakeholders.

Construction Permit Requirements for Bulk Plants and Gasoline Dispensing Facilities (GDF)

Because bulk plants and GDF that are minor sources (not Title V) previously had very few, if any, federal or state air quality requirements, the Department has not sought construction permits from these facilities. For small and medium sized GDF, compliance with current UST and flammable liquids regulations will also serve as compliance with the NESHAP. For larger GDF that will need to install vapor balance systems, the owners and operators of these facilities are generally aware of the requirements and will be working to meet the January 2011 compliance date. The Department will work with PMCI and affected facilities to assist with compliance. At this time, the Department does not plan to require air construction permits from GDF.

Because of how the NESHAP defines throughput at bulk gasoline facilities, it appears that bulk plant owners and operators will need to obtain enforceable gasoline throughput limits by January 2011 if they wish to avoid having their facilities classified as terminals. The Department estimates that nearly all of 100-200 bulk plants affected by the NESHAP do not have construction permits. At the August 21 meeting, the Department discussed a streamlined permitting strategy with stakeholders. The Department is still developing this strategy.

New Requirements for Auto body Refinishing and Miscellaneous Surface Coating (Items 2, 5 and 7)NESHAP Requirements (Items 5 and 7)

The third area source NESHAP being adopted affects paint stripping and certain surface coating operations, including spray coating of motor vehicles and mobile equipment.

Currently, the Department is aware of only one facility that may be affected by the paint stripping provisions of this NESHAP.

The NESHAP requirements for surface coating require owners and operators of facilities that spray apply coatings containing certain "target HAP" to control HAP through a variety of means. In brief, owners and operators at affected facilities must enclose spray areas, use high efficiency paint guns, capture 98% of overspray, capture paint and solvent when cleaning, and train and certify paint operators. Owners and operators at existing facilities will have until January 2011 to either switch to coatings that do not contain the target HAP, or to comply with the NESHAP requirements. The Department estimates that 1000 minor source facilities may be subject to the NESHAP, but that many of these facility owners and operators will choose to stop using the target HAP prior to the NESHAP compliance date.

The Department, in cooperation with UNI, IDED, and Linn and Polk County local air programs, hosted the first stakeholder meeting on July 15. The 30 participants received a presentation on the NESHAP and air permitting requirements, a draft guide and other outreach materials. The participants provided valuable input at this initial meeting, and the Department and UNI will be offering additional presentations and compliance assistance tools over the next 18 months.

Construction Permit Requirements (Item 2)

Currently, facilities that spray apply three (3) gallons or less of material per day are eligible for the permit by rule for spray booths (PBR). The owners or operators of PBR-eligible facilities simply complete a notification letter certifying that they meet the PBR requirements.

At the time the PBR was adopted, small spray operations were not subject to any federal air quality regulations. Under the new NESHAP, the owner or operator of any size facility that uses target HAP must comply with the NESHAP. Additionally, owners and operators that spray coat motor vehicles and mobile equipment must petition for an exemption if they choose not to use the target HAP.

To accommodate the new NESHAP requirements, the Department is amending the PBR requirements and the accompanying DNR form to require that an owner or operator certify that the facility is in compliance with or otherwise exempt from the NESHAP. The revised PBR form will guide owners and operators through a series of questions that will assist them with the NESHAP. Owners and operators of existing facilities that choose to continue using the target HAP will need to re-apply for the PBR to certify compliance prior to the NESHAP compliance date. These rule changes will assist the Department air quality and field office staff in ensuring NESHAP compliance, while still allowing smaller spray operations to use a streamlined permit.

Adoption of Additional NSPS and NESHAP amendments (Items 3 and 5)

The Department is also adopting additional, federal amendments to existing NSPS and NESHAP. These amendments consist of administrative changes, technical updates and clarifications, and are summarized in the attached Adopted and Filed rulemaking.

If the Commission approves the final rules, the final rules will be published in the Iowa Administrative Code on February 11, 2009, and will become effective on March 18, 2009.

Motion was made by Shearon Elderkin to approve the final rule – Chapters 22 and 23 as presented. Seconded by David Petty. Motion carried unanimously.

APPROVED AS PRESENTED

NOTICE OF INTENDED ACTION – CHAPTER 61 – WATER QUALITY STANDARDS (STREAM RECLASSIFICATIONS VIA USE ASSESSMENT AND USE ATTAINABILITY ANALYSES – BATCH #2)

Chuck Corell presented the following information.

The commission was informed of the Notice of Intended Action regarding proposed rulemaking to amend the recreational and warm water aquatic life use designations for **134** river and stream segments. Listed below are the stream segments that will be included in the rule. Please note this is a preliminary list and changes may be made before the Notice of Intended Action is presented for approval. With the notice, we will also make available a more detailed list of the segments that includes more information about the length of the segment, the current designated uses and

the recommend designated uses. The individual Use Assessment and Use Attainability Analyses for these segments are available (or soon will be) on the department's web site at: <http://programs.iowadnr.gov/uaa/search.aspx>

Recent rulemaking and 2006 legislative action have brought the DNR's water quality rules towards compliance with federal Clean Water Act requirements and U.S. Environmental Protection Agency (EPA) regulations, establishing new levels of protection for water quality. As an outcome of these efforts, all 26,000 miles of Iowa's perennial (flowing year-round) streams and intermittent streams with perennial pools are initially protected at the highest levels for recreation and warm water aquatic life uses. These actions provide initial protection for many miles of perennial streams that were previously not designated for aquatic life and/or recreational uses before.

Under these new rules, it is presumed that all perennial streams and rivers are attaining the highest level of recreation and aquatic life uses and should be protected for activities such as fishing and swimming. This concept of assigning all perennial streams the highest use designation, unless assessments show that the stream does not deserve that level of protection, is referred to as the "rebuttable presumption". Included in the federal regulations are the provisions that allow for scientific analysis of these "presumed" recreational and aquatic life uses. An integral part of implementing the new rules is verifying that a stream is capable of supporting the presumed uses.

The concept of Use Assessment and Use Attainability Analysis (UA/UAA) is being applied by the DNR as a step-by-step process to gather site-specific field data on stream features and uses. The DNR then assesses available information to determine if the "presumed" recreational and aquatic life uses are appropriate.

The DNR elected to perform a UA/UAA on any newly designated stream that receives a continuous discharge from a facility with a National Pollutant Discharge Elimination System (NPDES) permit. Prior to issuing a NPDES permit for an affected facility, the DNR must complete a UA/UAA for the receiving stream or stream network.

We have four public meetings scheduled for February. We advise the effected facilities to attend as well general public. These meetings are very informal compared to public hearings. The next batch will be coming to the Commission in June.

UA/UAA Batch #2 streams requiring rulemaking

1. Apple Creek (Linn Co.)
2. Ballard Creek (Story Co.)
3. Bear Creek (Wapello Co.)
4. Big Bear Creek (Poweshiek/Iowa Co.)
5. Big Bear Creek (Poweshiek/Iowa Co.)
6. Black Hawk Creek (Black Hawk/Grundy Co.)
7. Black Hawk Creek (Black Hawk/Grundy Co.)
8. Blue Creek (Benton/Linn Co.)
9. Brewers Creek (Hamilton Co.)
10. Brewers Creek (Hamilton Co.)

11. Brush Creek (Marshall Co.)
12. Bulger Creek (Dallas Co.)
13. Burr Oak Creek (Jefferson Co.)
14. Clear Creek (Cerro Gordo Co.)
15. Crooked Creek (Cedar Co.)
16. Crow Creek (Jefferson Co.)
17. Deep Creek (Plymouth Co.)
18. Deep Creek (Plymouth Co.)
19. Drainage Ditch #13 (Hancock Co.)
20. Drainage Ditch #4 (Wright Co.)
21. Drainage Ditch #81 (Worth Co.)
22. Dry Creek (Benton/Linn Co.)
23. Dry Creek (Linn Co.)
24. East Branch Blue Creek (Lin Co.)
25. East Nodaway River
26. Elk Run (Black Hawk Co.)
27. Elk Run (Black Hawk Co.)
28. Flint Creek (Des Moines Co.)
29. Fourmile Creek (Kossuth Co.)
30. Fourmile Creek (Union Co.)
31. Fudge Creek (Wapello Co.)
32. Granger Creek (Dubuque Co.)
33. Hartgrave Creek (Franklin/Butler Co.)
34. Hawkeye Creek (Des Moines Co.)
35. Hawkeye-Dolbee Diversion Channel (Des Moines Co.)
36. Honey Creek (Delaware Co.)
37. Indian Creek (Audobon/Shelby/Cass Co.)
38. Indian Creek (Linn Co.)
39. Indian Creek (Sac Co.)
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42. Little Bear Creek (Poweshiek Co.)
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44. Little Cedar River (Chickasaw/Floyd/Mitchell Co.)
45. Little Cedar River (Mitchell Co.)
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48. Little Walnut Creek (Appanoose Co.)
49. Lutes Creek (Marshall Co.)
50. Marvel Creek (Adair Co.)
51. Mosquito Creek (Pottawattamie Co.)
52. Mosquito Creek (Pottawattamie/Harrison/Shelby Co.)
53. Mud Creek (Benton Co.)
54. Mud Creek (Polk Co.)
55. Murray Creek (O'Brien Co.)
56. Neola Creek (Pottawattamie Co.)
57. North Timber Creek (Marshall Co.)
58. Orange City Slough (Sioux Co.)
59. Platte River
60. Plum Creek (Delaware Co.)

61. Plum Creek (Delaware Co.)
62. Plum Creek (Delaware Co.)
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67. South Timber Creek (Marshall Co.)
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70. Spring Creek (Franklin Co.)
71. Squaw Creek (Franklin Co.)
72. Squaw Creek (Franklin Co.)
73. Squaw Creek (Linn Co.)
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75. Sugar Creek (Keokuk Co.)
76. Timber Creek (Marshall Co.)
77. Twelvemile Creek (Union Co.)
78. Unnamed Creek (#1) (City of Atkins)
79. Unnamed Creek (#1) (City of Brighton)
80. Unnamed Creek (#1) (City of Elkhart)
81. Unnamed Creek (#1) (City of Milo)
82. Unnamed Creek (#1) (HWH Company)
83. Unnamed Creek (#1) (Lakewood Estates MHP)
84. Unnamed Creek (#1) (Little Sioux Corn Processing)
85. Unnamed Creek (#1) (Missouri Valley Energy - Exira)
86. Unnamed Creek (#1) (Missouri Valley Energy - Exira)
87. Unnamed Creek (#1) (Siouxland Energy)
88. Unnamed Creek (#2) (City of Atkins)
89. Unnamed Creek (#2) (City of Brighton)
90. Unnamed Creek (#2) (City of Cincinnati)
91. Unnamed Creek (#2) (City of Elkhart)
92. Unnamed Creek (#2) (City of Hedrick)
93. Unnamed Creek (#2) (City of Middletown)
94. Unnamed Creek (#2) (City of Milo)
95. Unnamed Creek (#2) (Oak Hills Subdivision)
96. Unnamed Creek (aka Bull Ditch)
97. Unnamed Creek (aka Johnson's Creek)
98. Unnamed Creek (Bulk Petroleum)
99. Unnamed Creek (Chantland-PVS Company)
100. Unnamed Creek (City of Carroll)
101. Unnamed Creek (City of Creston WWTP)
102. Unnamed Creek (City of Earlville)
103. Unnamed Creek (City of Hedrick)
104. Unnamed Creek (City of Hills)
105. Unnamed Creek (City of Huxley)
106. Unnamed Creek (City of Malvern)
107. Unnamed Creek (City of Remsen)
108. Unnamed Creek (City of Rickardsville)
109. Unnamed Creek (City of Sioux Center)
110. Unnamed Creek (City of Sully)

- 111.Unnamed Creek (Corn Belt Power)
- 112.Unnamed Creek (DNR Viking Lake)
- 113.Unnamed Creek (Echo Valley MHP #2)
- 114.Unnamed Creek (Ecosystems Inc.)
- 115.Unnamed Creek (Heartland Lysine)
- 116.Unnamed Creek (IAAP)
- 117.Unnamed Creek (IAMU)
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- 122.Unnamed Creek (Siouxpreme Packing)
- 123.Unnamed Creek (Stacyville COOP Creamery)
- 124.Unnamed Creek (Tri-Center Community School)
- 125.Unnamed Creek (Wells Dairy - North Plant)
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- 127.Waterman Creek (O'Brien Co.)
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- 129.West Branch Blue Creek (Benton Co.)
- 130.West Branch Floyd River
- 131.Willow Creek (Cerro Gordo Co.)
- 132.Willow Creek (Cerro Gordo Co.)
- 133.Willow Creek (Cerro Gordo Co.)
- 134.Willow Creek (Cerro Gordo Co.)

Henry Marquard asked that all of the information be distributed before the meeting.

INFORMATION

FINAL ADOPTION – CHAPTER 69 – ONSITE WASTEWATER TREATMENT DISPOSAL SYSTEMS, NPDES GENERAL PERMIT #4 AND CHAPTER 64, “WASTEWATER CONSTRUCTION AND OPERATION PERMITS”

Chuck Corell, Water Quality Bureau Chief presented the following information.

The Commission is requested to approve the amendments to Chapter 69, “Onsite Wastewater Treatment and Disposal Systems”. The amendments to Chapter 69 include the addition of a time of transfer section as required by Senate File 261, the addition of new technologies and technology specification updates, and renewal of NPDES General Permit #4 for discharging onsite systems. IAC 567-Chapter 64.15 will change to reflect the new effective dates of the NPDES General Permit #4.

Three public hearings were held on December 2, 3, and 4, 2008, in Des Moines, Iowa City and Ft. Dodge respectively. Written comments were received through December 5, 2008. Thirty persons or groups provided oral or written comments on the proposed amendments. The responsiveness summary addresses all of the comments received.

The following is a summary of the items that have been changed based on comments received:

- The time of transfer inspector disciplinary action section, taken from Chapter 82, “Water Well Contractor Certification”, was replaced with the more up to date language used in Chapter 81, “Water and Wastewater Operator Certification”.
- The effective date of time of transfer inspections was added, July 1, 2009, since it will be after the effective date of these rules.
- The dates used for continuing education requirements for time of transfer inspectors were slightly modified to coincide with other similar dates used in the Operator Certification database.
- Language was added to the continuing education section for time of transfer inspectors to exempt newly certified inspectors from having to earn continuing education credits in a shorter period than two years because of the date newly certified.
- Noncompliance with child support language was added to the time of transfer inspector certification requirements.
- Changes to the sizing of chambers were removed and the current sizing requirements were retained. Expanded polystyrene aggregate is to be sized similarly.
- Chamber sizing requirements were changed to ensure chambers of sufficient height are used to approximate a conventional soil absorption trench.
- The definition of drainage ditch was removed.
- The definition of expanded polystyrene aggregate was changed to exclude a proprietary manufacturing process.
- A soils and vegetative cover section was added to the at-grade soils absorption system section. A requirement to divert surface water was also added.
- The phrase “if applicable” was added to each discharging systems section in the effluent sampling subsection to clarify which systems require sampling.

The Commission is requested to approve this Final Rule.

Motion was made by Susan Heathcote to approve the final adoption as presented. Seconded by Shearon Elderkin. Motion carried unanimously.

APPROVED AS PRESENTED

NOTICE OF INTENDED ACTION – CHAPTER 65 – DEFINITIONS AND REGULATIONS PERTAINING TO NPDES PERMITS

Gene Tinker with the Animal Feeding Operations section presented the following information.

The Commission is requested to grant permission to proceed with rulemaking and publish a Notice of Intended Action to amend 567 Iowa Administrative Code Chapter 65 – Animal Feeding Operations. The purpose of the amendments is to make corrections so the administrative rules are equivalent to the Code of Iowa and consistent with federal law. The proposed corrections are made to definitions, land application practices to prevent environmental

damage and nutrient management plan requirements with associated phosphorus index implementation. In addition, changes are made where the rules indicated specific dates which are now past.

Public hearings will be held across the state on March 3rd, 4th and 5th. The comment period opens tomorrow if approved today.

Most of the operations that would be affected by this rule package would be the cattle operations. Therefore, I checked with the Iowa Cattlemen's Association to see what they would like to have for hearings. DNR Field staff recommended the four locations. (Spencer, Atlantic, Cedar Rapids and Des Moines)

Commissioners and staff discussed how the proposed amendments correlate with other animal feeding operation rules.

David Petty expressed his concerns for the specific dates listed and how they will affect farmers needing to apply manure if the weather is cooperative. It puts limitations on farmers using their best judgment to do the right thing.

Ed Tormey gave a brief update on EPA's review of the NPDES de-delegation petition including the state's compliance with the federal conflict of interest provision.

Motion was made by Susan Heathcote to approve the NOIA – Chapter 65 as presented. Seconded Marty Stimson. Roll call vote went as follows: David Petty – nay; Shearon Elderkin – aye; Paul Johnson – aye; Marty Stimson – aye; Gene Ver Steeg – aye; Sue Morrow – aye; Susan Heathcote – aye; Henry Marquard – aye. Motion carried.

APPROVED AS PRESENTED

ANNUAL EPC REPORT TO THE LEGISLATORS

Commissioners went through the report and made final changes. Lisa Nissen will update the recent version and send to each of the Commissioners for distribution at tomorrow's legislative breakfast.

A copy of the Annual EPC Report to the Legislators is posted on <http://www.iowadnr.gov/epc/index.html>

Motion was made by Henry Marquard to approve the recommended changes to the annual report. Seconded by Shearon Elderkin. Motion carried unanimously.

APPROVED

DRAFT AMENDMENTS TO 65.10(5); CONSTRUCTION PERMIT “DEMAND FOR HEARING” PROCEDURES

Randy Clark, DNR Attorney presented the following information.

At the October, 2008 meeting, the Commission requested that the Department’s Legal Services Bureau prepare draft amendments to rules regarding construction permit “demand for hearing” procedures. The draft amendments to subrule 65.10(5) are highlighted in yellow.

As requested by the Commission, the draft amendments address the role of Department staff, document exchange requirements, burden of proof and additional time for the Commission to provide a written statement of the reasons for a decision. In addition, the draft amendments include an option for the Commission to appoint a review committee of not more than four Commissioners to consider an application prior to the Department’s preliminary determination and make a recommendation to the Commission in the event of a demand for hearing.

65.10(5) Determination by the department. The department must receive the county board of supervisors’ comments or evaluation for approval or disapproval of an application for a construction permit not later than 30 days following the applicant’s delivery of the application to the department. Regardless of whether the department receives comments or an evaluation by a county board of supervisors, the department must render a determination or a preliminary determination to approve or disapprove an application for a construction permit within 60 days following the applicant’s delivery of an application to the department. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the county or department to act upon the application shall be suspended for the period provided in the notice, but for not more than 30 days after the department’s receipt of the notice. The applicant may submit more than one notice. However, the department may terminate an application if no action is required by the department for one year following delivery of the application to the board. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant and the board of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice, but for not more than 30 days. However, the department shall not provide for more than one continuance. If review of the application is delayed because the application is incomplete, and the applicant fails to supply requested information within a reasonable time prior to the deadline for action on the application, the permit may be denied and a new application will be required if the applicant wishes to proceed. If the commission has appointed a review committee as provided in 65.10(9) the department shall provide information requested by the committee regarding the application and the status of the department’s review. The review committee may request that the department provide notice of a continuance, if available, and consider additional issues before rendering a preliminary determination.

The department will approve or disapprove an application as follows:

a. If the county board of supervisors does not submit a construction evaluation resolution to the department, fails to submit an adopted recommendation, submits only comments, or fails to submit comments, the department shall approve the application if the application meets the requirements of this chapter and, Iowa Code chapter 455B 459, orders issued by the department, and terms and conditions applicable to permits, certifications or manure management plans required by Iowa Code chapter 459. The department will disapprove the application if it does not meet such requirements.

b. If the board of supervisors for the county in which the confinement feeding operation is proposed to be constructed has filed a county construction evaluation resolution and submits an adopted recommendation to approve the construction permit application, which may be based on a satisfactory rating produced by the master matrix, to the department, the department shall preliminarily approve an application for a construction permit if the department determines that the application meets the requirements of this chapter and, Iowa Code chapter 455B 459, orders issued by the department, and terms and conditions

applicable to permits, certifications or manure management plans required by Iowa Code chapter 459. The department shall preliminarily disapprove an application that does not satisfy the requirements of this chapter ~~and~~, Iowa Code chapter 455B 459, orders issued by the department, and terms and conditions applicable to permits, certifications or manure management plans required by Iowa Code chapter 459 regardless of the adopted recommendation of the board of supervisors. The department shall consider any timely filed comments made by the board as provided in this subrule to determine if an application meets the requirements of this chapter ~~and~~, Iowa Code chapter 455B 459, orders issued by the department, and terms and conditions applicable to permits, certifications or manure management plans required by Iowa Code chapter 459.

c. If the board submits to the department an adopted recommendation to disapprove an application for a construction permit that is based on a rating produced by the master matrix, the department shall first determine if the application meets the requirements of this chapter ~~and~~, Iowa Code chapter 455B 459, orders issued by the department, and terms and conditions applicable to permits, certifications or manure management plans required by Iowa Code chapter 459. The department shall preliminarily disapprove an application that does not satisfy the requirements of this chapter ~~and~~, Iowa Code chapter 455B 459, orders issued by the department, and terms and conditions applicable to permits, certifications or manure management plans required by Iowa Code chapter 459 regardless of any result produced by using the master matrix. If the application meets the requirements of this chapter ~~and~~, Iowa Code chapter 455B 459, orders issued by the department, and terms and conditions applicable to permits, certifications or manure management plans required by Iowa Code chapter 459, the department shall conduct an independent evaluation of the application using the master matrix. The department shall preliminarily approve the application if it achieves a satisfactory rating according to the department's evaluation. The department shall preliminarily disapprove the application if it produces an unsatisfactory rating regardless of whether the application satisfies the requirements of this chapter ~~and~~, Iowa Code chapter 455B 459, orders issued by the department, and terms and conditions applicable to permits, certifications or manure management plans required by Iowa Code chapter 459. The department shall consider any timely filed comments made by the board as provided in this subrule to determine if an application meets the requirements of this chapter ~~and~~, Iowa Code chapter 455B 459, orders issued by the department, and terms and conditions applicable to permits, certifications or manure management plans required by Iowa Code chapter 459.

65.10(6) *Departmental notification of permit application decision.* Within three days following the department's determination or preliminary determination to approve or disapprove the application for a construction permit, the department shall deliver a notice of the decision to the applicant.

a. If the county board of supervisors has submitted to the department an adopted recommendation for the approval or disapproval of a construction permit application, the department shall notify the board of the department's preliminary decision to approve or disapprove the application at the same time. For a preliminary decision to approve an application, the notice shall consist of a copy of the draft construction permit. For a preliminary decision to disapprove an application, the notice shall consist of a copy of the department's letter of preliminary denial. The preliminary decision to approve or disapprove an application becomes final without further proceedings if neither the county board of supervisors nor the applicant demands a hearing before the commission or appeals pursuant to 65.10(7) and 65.10(8).

b. If the county board of supervisors has not submitted to the department an adopted recommendation for the approval or disapproval of a construction permit application, the department notice shall include the construction permit or letter of denial. The applicant may appeal the permit or denial as provided in 65.10(8).

65.10(7) *County demand for hearing.* A county board of supervisors that has submitted an adopted recommendation to the department may contest the department's preliminary decision to approve or disapprove an application by filing a written demand for a hearing before the commission. Due to the need for expedited scheduling, the county board of supervisors shall, as soon as possible but not later than 14 days following receipt of the department's notice of preliminary decision, notify the chief of the department's water quality bureau by facsimile transmission to (515)281-8895 that the board intends to file a demand for hearing. The demand for hearing shall be mailed to Director, Department of Natural Resources, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319, and must be postmarked within 14 days following receipt of the department's notice of preliminary decision. The demand shall include a statement providing all reasons why the application should be approved or disapproved according to legal requirements in this chapter ~~and~~, Iowa Code chapter 455B 459, orders issued by the department, and terms and conditions applicable to permits, certifications or manure management plans required by Iowa Code chapter 459; legal briefs and any other documents to be considered by the commission or a statement indicating that no other documents will be submitted for consideration by the commission; and a statement indicating whether oral argument before the commission is desired.

65.10(8) *Applicant demand for hearing; appeal.* The applicant may contest the department's decision or preliminary

decision to approve or disapprove an application by filing a written demand for a hearing. The applicant may elect to have the hearing conducted as a contested case before an administrative law judge pursuant to 561—Chapter 7, or before the commission pursuant to subrule 65.10(9). The demand for hearing shall indicate which procedure the applicant elects.

a. Applicant demand for hearing before the commission. Due to the need for expedited scheduling, the applicant shall, as soon as possible but not later than 14 days following receipt of the department's notice of preliminary decision, notify the chief of the department's water quality bureau by facsimile transmission to (515)281-8895 that the applicant intends to file a demand for hearing; however, in cases in which the applicant would not demand a hearing unless the county demanded one, the applicant will be allowed an additional three working days to file a demand. It is the responsibility of the applicant to communicate with the department to determine if a county demand has been filed. The demand for hearing shall be mailed to Director, Department of Natural Resources, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319, and must be postmarked within 14 days following receipt of the department's notice of preliminary decision, or such longer time as authorized in this paragraph. The demand shall include a statement providing all reasons why the application should be approved or disapproved without specified conditions according to legal requirements in this chapter ~~and~~ Iowa Code chapter ~~455B~~ ~~455B~~ 459, orders issued by the department, and terms and conditions applicable to permits, certifications or manure management plans required by Iowa Code chapter 459; legal briefs and any other documents to be considered by the commission or a statement indicating that no other documents will be submitted for consideration by the commission; and a statement indicating whether oral argument before the commission is desired. If both the applicant and a county board of supervisors are contesting the department's preliminary decision, the applicant may request that the commission conduct the hearing on a consolidated basis.

b. Applicant contested case appeal. The applicant may appeal a permit or letter of denial according to the contested case procedures set forth in 561—Chapter 7; however, if the county has demanded a hearing pursuant to subrule 65.10(7), a demand for hearing must be filed within the time frames set forth in paragraph "a." If both the applicant and a county board of supervisors are contesting the department's preliminary decision, the applicant may request that the hearings be consolidated and conducted as a contested case.

65.10(9) Decision by the commission. The director shall schedule a hearing on a demand pursuant to 65.10(7) or 65.10(8)"a" for consideration at the next regular meeting of the commission and notify the county board of supervisors and the applicant of the time and place. However, if the next regular meeting of the commission will take place more than 35 days after receipt of the demand for hearing, the director shall schedule a special in-person meeting or an electronic meeting of the commission pursuant to Iowa Code section 21.8. The director shall provide the applicant with copies of all documents submitted by the county board of supervisors and a copy of the department's file on the permit application within three days after receipt of the county board of supervisors' comments. The applicant may submit responses or other documents for consideration by the commission postmarked or hand-delivered at least ~~14~~ 7 days prior to the date of consideration by the commission. Consideration by the commission is not a contested case. Oral participation before the commission will be limited to time periods specified by the commission and, unless otherwise determined by the commission, to argument by representatives from the county board of supervisors, the applicant and the department. The party filing a demand for hearing opposing the department's preliminary decision shall have the burden to establish by a preponderance of the evidence that the preliminary decision does not comply with legal requirements in this chapter, Iowa Code chapter 459, orders issued by the department, and terms and conditions applicable to permits, certifications or manure management plans required by Iowa Code chapter 459. In rendering its decision the commission shall only consider documents and oral statements provided by representatives from the county board of supervisors, the applicant and the department. Representatives of the department shall not advocate for either the county board of supervisors or the applicant but may summarize the basis for the department's preliminary decision and respond to questions by members of the commission. The commission may also consider the recommendation of a review committee consisting of not more than 4 commission members appointed by the commission to evaluate the technical aspects of applications and the adopted recommendations by county boards of supervisors. The decision by the commission shall be stated on the record and shall be final agency action pursuant to Iowa Code chapter 17A. Within 30 days of the decision the commission may file a written statement of the basis for the decision. If the commission reverses or modifies the department's decision, the department shall issue the appropriate permit or letter of denial to the applicant. The letter of decision shall contain the reasons for the action regarding the permit.

Susan Heathcote suggested that a sub-committee of Commissioners be appointed to discuss these changes and make suggestions to the Department.

Henry Marquard said that his intent was to get clarification and an outline of hearing procedures. I also believe that the Commission has authority outside of Iowa Code Chapter 459.

Commissioners went on to discuss and ask questions about their authority regarding animal feeding operations, the department evaluation rule and hearing procedures.

INFORMATION

MONTHLY REPORTS

Wayne Gieselman, Division Administrator, Environmental Protection Division, presented the following items.

The following monthly reports are enclosed with the agenda for the Commission's information and have been posted on the DNR website under the appropriate meeting month: <http://www.iowadnr.com/epc/index.html>

1. Rulemaking Status Report
2. Variance Report
3. Hazardous Substance/Emergency Response Report
4. Manure Releases Report
5. Enforcement Status Report
6. Administrative Penalty Report
7. Attorney General Referrals Report
8. Contested Case Status Report
9. Waste Water By-passes Report

INFORMATION

GENERAL DISCUSSION

Wayne Gieselman briefly discussed the recent budget cuts and its impact to the Environmental Services Division.

Director Leopold distributed the following information:

2009 Department of Natural Resources Proposed Legislation Environmental Services Division

1. Underground Storage Tank Program Funding

There is an annual tank management fee of \$65 paid by owners and operators of underground storage tanks of which the DNR receives 23% of the approx. \$550,000 collected annually. Under Iowa Code

section 455B.479, 77% of the annual fees is transferred to the Iowa Comprehensive UST Fund Board. Since 2006, the UST Fund Board and the DNR have entered into a 28E agreement to provide the transfer of the 77% of fees to the DNR for administration of the UST operations and leak prevention program. Basically this proposal is for the DNR to retain 100% of the tank management fee that it collects to provide ongoing funding for the UST program.

2. Engine Idle Reduction Program

This proposal would establish a new policy for engine idling. According to an EPA model state idling law paper, approx. 15 states and dozens of local jurisdictions have idling laws. Since Iowa has areas of the state likely to violate federal air quality standards for particulate matter, the reduction of idling would help to reduce particulate matter (pm) levels statewide. MO is currently proposing a heavy duty diesel idle reduction program.

3. Imposition of State Tonnage Fee for Solid Waste Disposal

This is a 2 part proposal removing the state tonnage fee exemption for construction and demolition landfills and imposing the tonnage fee on all wastes passing through transfer stations that will not be disposed of at an Iowa landfill.

4. Residential Burning Ban in Cities

This proposal is to establish a phased-in ban on the burning of residential waste (household trash and landscape waste) in and near municipalities. The phase-in will start in calendar year 2010 for cities with a population of 2500 or greater and will apply to all cities beginning in calendar year 2013.

5. Increase the Cap for Public Water Supply Program Fees

The proposal is to raise the statutory cap on public water supply fees from \$350,000 to \$1 million to allow for the Department, through rulemaking, to increase fees as needed to support the Drinking Water Program. The current cap was established in 1995 and does not take into account increased additional federal requirements and increasing program costs. Adequate funding is being sought to ensure that DNR can continue to conduct EPA-required elements; that operating permits are issued in a timely manner and that technical assistance remains available to public water supplies, particularly small systems, to help them comply with regulations and resolve issues within their systems.

INFORMATION

NEXT MEETING DATES

February 10, 2009 Meeting in Urbandale
March 16, 2009 Tour of the Clipper Wind Farm
March 17, 2009 Meeting in Cedar Rapids

ADJOURNMENT

With no further business to come before the Environmental Protection Commission, Chairperson Henry Marquard adjourned the meeting at 5:40 p.m., Tuesday, January 13, 2009.

Richard A. Leopold, Director

Henry Marquard, Chair

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